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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,374	07/18/2003	Stephen Alan Smith	3177 P 427	4371

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3781

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,374

Applicant(s)

SMITH ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8-24-06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 30-38, 41, 42, 47, 48, 50-52, 66-69 and 71-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-16, 30-38 and 66-69 is/are allowed.
- 6) ☒ Claim(s) 41, 42 and 72-75 is/are rejected.
- 7) ☒ Claim(s) 47, 48 and 50-52 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 41 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,3,21,23,24 and 26 of copending Application No.

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11/211,319 (US Publication 2006/0000832). Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a lid having a cover and a moveable element rotatably mounted on a support of the cover. The instant claim more broadly sets forth a means for rotatably supporting the element whereas the co-pending claims set forth a support and its location with respect to the cover. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth the support structure and its relative location on the cover to provide a more distinguishing feature of the lid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claim 41 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 15 of copending Application No. 11/211,319 (US Publication 2006/0000832). Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a lid having a cover and a moveable element rotatably mounted on a support of the cover. The published claim further sets forth the cover as being thermoformed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of thermoforming the instant lid to provide a method of forming the lid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claim 42 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 21-23,26,27, and 33 of copending Application No. 11/211,319 (US Publication 2006/0000832). Although the conflicting claims are not identical,

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they are not patentably distinct from each other because they both teach a lid having a cover and a moveable element rotatably mounted on a support of the cover. The claims set forth varying terminology to set forth the same structure.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claim 41 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4,31, and 41 of copending Application No. 10/447,085 (US Publication 2003/0197012). Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a lid having a cover and a moveable element rotatably mounted on a support of the cover. The instant claim more broadly sets forth a means for rotatably supporting the element whereas the co-pending claims set forth a support and its location with respect to the cover. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth the support structure and its relative location on the cover to provide a more distinguishing feature of the lid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claim 42 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of copending Application No. 10/954,827 (US Publication 2005/0127075). Although the conflicting claims are not identical, they are not patentably distinct from each other because they both teach a lid having a cover and a moveable element rotatably mounted on a support of the cover. The published claim sets forth additional structural details of the lid not set forth in the instant claim. It would have been

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obvious to one of ordinary skill in the art at the time the invention was made to set forth additional structural details of the top wall to provide more distinguishing features of the lid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

7. Claims 41 and 72-75 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no structural relationship between the outer periphery, the substantially circular inner periphery, and an outer edge of the top wall. Currently, the peripheral edge is not associated with either of the outer periphery or the substantially circular inner periphery.

With regard to claim 72, what is the structural relationship of the outer wall to the other portions of the cover?

Allowable Subject Matter

8. Claims 1-16,30-38,66-69, and 71 are allowed over the prior art of record.

9. Claims 47,48, and 50-52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

12. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

13. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has

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expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH


Robin A. Hylton
Primary Examiner GAU 3781